

Checklist for Negotiating and Drafting of Coaches' Employment Agreements

By Martin J. Greenberg

As dedicated to Jason Been

Jason Been was a sports enthusiast. An avid baseball fan, a Brewers batboy, and a high school baseball star. Sports was his passion and ultimately became his lifelong avocation. This quiet and humble man became a universally respected genius in the sports industry. Jason Been was a statistical sports wizard, a walking encyclopedia of sports facts and figures, and a “go to guy” in the industry.

I had the privilege of discussing the business of sports with Jason on my Time Warner cable sports show, Sport\$Biz. His knowledge, ability to prognosticate, and understanding of what has now become a multi-billion dollar industry was only to be admired.

Unfortunately, a productive life at age 40 was cut short on June 5, 2014 after a ten year battle with brain cancer. Jason never gave up, was a fighter for life, and worked until shortly before he died. Never did he ask for anybody's sympathy, nor ever placed blame, and he was always upbeat and optimistic.

The Jason Beens of the world need to be emulated and placed on pedestals as role models. An affliction must never get in the way of courage, hope, and optimism. Jason cared deeply about people. Any extra savings each month went to St. Jude's to help find cures for the disease that had so affected his life. How lucky Jason was to have lifetime coaches in Joel and Diane Been, who helped set the sail in the right direction.

Jason Been is an excellent example of it is not how long we live, but what we do with our lives while we are living and how we energize the world around us, even in the most difficult of times.

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1. MOU-LOI Compliance
2. Whereas Clauses
3. Employment Term
 - a. Fixed term
 - b. Definition of contract year
 - c. Rollover - automatic-consensual
 - d. Tenure rules apply
 - e. Contract extension based on
 - i. Games won
 - ii. Attaining NCAA APR sufficient to avoid eligibility for sanctions
 - iii. No serious misconduct
 - iv. Wins, conference or tournament championship
 - v. Receives invitation to NCAA Tournament
 - f. Renegotiation - Reopener
4. Duties and Authority
 - a. Select personnel - staffing
 - b. Supervise football personnel, including promoting an atmosphere of compliance and program management
 - c. Weekly radio and television show
 - d. Public appearances
 - e. Comply and abide by all governing athletic rules - compliance
 - f. Respect reporting regulations and organizational structure
 - g. Recommendations re rescheduling
 - h. Meeting academic requirements by student athletes.
 - i. Fundraising
 - j. Public relations - participation in marketing and promotional activities
 - k. Budget proposal and management
 - l. Coaching – teaching - training
 - m. Scheduling assistance
 - n. Loyalty and best efforts
 - o. Accountability
 - p. Reporting
 - q. Media interfacing - interviews
 - r. Student athlete discipline
 - s. Annual staff evaluations
 - t. System to monitor academic progress
 - u. Attending conference and NCAA meetings

- v. Operating summer camps
 - w. Recruiting – prospect evaluation
 - x. Outreach – University Athletic Foundation
 - y. Duties as they may be assigned by the athletic director
5. Standard of Conduct
 6. Exclusivity of Services
 7. Signing Bonus
 8. Salary increases
 - a. Merit
 - b. Annual percentage increases
 - c. payment – university payroll practices
 - d. re-opener
 9. Benefits
 - a. Major Medical coverage
 - b. Life Insurance - Disability Insurance
 - c. University contributions to TIAA-CREF
 - d. Other university approved retirement programs
 - e. Sick leave – paid leave – carryover
 - f. Tuition reductions – scholarship opportunities
 - g. Vacation with pay
 - h. Housing benefits
 10. Talent Fee – supplemental annual compensation - outside marketing and promotional income
 11. Outside Income
 - a. Endorsements
 - b. Speaking engagements
 - c. Books - publications
 - d. Media programs – internet
 - e. Consulting
 12. Restrictions on Outside Income
 - a. University obligations are primary
 - b. University is not liable
 - c. Prior approval
 - d. Non-competition with university
 - e. Disclosure
 - f. No conflict with university policy
 - g. Not detrimental to the university
 - h. Non-violative of conference/university/NCAA rules and regulations

13. Reporting of Athletically Related Income
 - a. Speaking engagements
 - b. Salary supplements
 - c. Endorsement/consultant contracts for athletic apparel or equipment
 - d. Television appearances or commercials
 - e. Radio appearance
 - f. Income from corporations in exchange for charitable work
 - g. Annuities
 - h. Housing benefits
 - i. Country club/gym memberships
 - j. Sports camps and clinics
 - k. Complimentary ticket sales
 - l. Use of Automobile

14. Retention or Longevity Bonuses – Annual Stay Benefit

15. Perquisites
 - a. Automobiles or stipulated payment (stipend)
 - b. Tickets and parking passes
 - c. Country club, heath or social club memberships
 - d. Summer camp – clinics – attach Sports Camp Agreement
 - e. Travel allowance - spousal travel
 - f. Dependant travel
 - g. Expense account
 - h. Relocation expense
 - i. Moving expenses
 - j. Airplane use – private jet
 - k. Skyboxes - suites
 - l. Summer camps - most favored nation
 - m. Discretionary fund
 - n. Cellular phone or technology allowance
 - o. Conferences - conventions

16. Up Step Life and Disability Insurance Plans

17. Deferred Compensation - Annuity Arrangements

18. Post Retirement University Employment - Tickets

19. Payment of Liquidated Damages to Previous Employer (Buyouts)
 - a. Income tax effect-tax responsibility

20. Entrepreneurial Sharing
 - a. Attendance
 - b. Gross Revenues – Ticket revenues

- c. Contributions
21. Interest Free or Forgivable Loans
 22. In Kind Apparel, Athletic Equipment, and Service Allowance
 23. Bonuses
 - a. Conference championship
 - b. Tournament championship
 - c. National NCAA championship or Playoff, Semi-Final, BCS Appearance
 - d. Academic progress
 - e. Graduation rate – Collective grade point
 - f. Conference coach of the year
 - g. National coach of the year
 - h. Attendance achievement
 - i. Team performance
 - j. Final Rankings
 - k. Season ticket sales – ticket revenue
 - l. No NCAA violations
 - m. Wins-Record
 - n. Top recruiting class
 - o. Student conduct bonus
 - p. Home residency
 - q. Cumulative vs. non-cumulative
 24. Reporting Relationship – Insubordination
 25. University Authorized Use of Coach's Name and Likeness – Right of Publicity
 26. Coach's Authorized Use of University Trademarks
 27. Annual Evaluation
 28. Termination - Mutual Agreement
 29. Termination for Cause and basis for termination for cause.
 - a. Neglect or inattention or refusal or inability to perform duties.
 - b. Breach of contract terms
 - c. Violation of University rules, or laws of the state or United States
 - d. Fraud or dishonesty in performance of duties and responsibilities
 - e. Fraud or dishonesty in preparing, falsifying, submitting, or altering documents
 - f. Failure by coach to manage team
 - g. Coach's instruction to any coach, student, or other person to respond inaccurately to an inquiry
 - h. Failure by coach to manage team

- i. Soliciting, placing, or accepting a bet - illegal betting or gambling
 - j. Use or consumption of drugs or alcoholic beverages
 - k. Sale, use, or possession of narcotics, drugs, or controlled substances
 - l. Failure to promptly report violations that the head coach knows or should have known about
 - m. Failure to obtain prior approval for outside income activities
 - n. Engaging in activities that bring University into public disrepute, scandal, ridicule, or violate University mission
 - o. Win-loss record
 - p. Repetitive or a pattern of conduct which constitutes violations of University or NCAA Rules
 - q. Violation of criminal statutes, whether prosecuted or not
 - r. Prolonged absences
 - s. A cause not previously enumerated that is adequate to sustain the termination of any other employee of the University
 - t. Failure to maintain an environment of NCAA Rules compliance
 - u. Breach of coach's representations and warranties as an inducement to the contract
 - v. Failure to cooperate fully with athletic director, compliance officer, or university officials
 - w. Engaging in moral turpitude
 - x. Non-compliance with NCAA 11.1.2.1.
 - y. Coach's conduct or omissions constitute a Level 1 or Level 2 violation
 - z. Engaging in any conduct that constitutes a conflict of interest
 - aa. Team APR which causes the program to be ineligible for bowl games or tournament games
 - bb. Any other cause adequate to sustain the termination of an athletic administrator or other professional employee of the university
30. University's Obligations re Termination for Cause – Limited Liability – Collateral Benefits
31. Procedural and Substantive Due Process
- a. Due process for termination for cause
 - b. Pre-Termination Meeting
 - c. Hearing
 - d. Right to counsel
 - e. Written notice
 - f. Due process hearing
 - g. State mandated procedure
 - h. Arbitration
 - i. Right to commence lawsuit
32. Other Disciplinary Actions
- a. Suspension

33. Resignation
34. Termination as a Result of Death
35. Termination as a Result of Disability – Inability to Perform
36. Termination for Cause by Coach
 - a. Failure to make any payment under employment agreement
 - b. Changes of status as a member of a particular conference
 - c. Changes in divisional status
 - d. NCAA violations that reduce the number of scholarships and imposes post-season bowl bans for which coach had no responsibility
 - e. Change in position of Athletic Director or President
37. Termination Without Cause
 - a. Liquidated damages
 - b. Obligation to mitigate
 - c. No obligation to mitigate
 - d. Good faith efforts
 - e. Comparable employment
 - f. Release agreement
 - g. Stretch provisions
38. Termination by Coach - Cut short
 - a. Liquidated damages
 - b. Recipient university responsibility
 - c. Assignment and assumption agreement by recipient university
39. Termination by Mutual of Agreement
40. Unique Services
41. Employment Opportunities
 - a. Prior notification to athletic director - consent
 - b. Timing
42. Non-solicitation of Recruits and Student Athletes
43. Covenant Not to Disclose Trade Secrets
44. Covenant Not to Compete
45. University Records and Materials
46. Clawback Clause – NCAA Violations – Covenant Violations

47. Indemnification - Hold Harmless
48. Representations and Warranties
 - a. No conviction of misdemeanor or felony
 - b. No discipline, reprimand, or sanction by NCAA or athletic conference
 - c. Never provide improper benefit to student athlete
 - d. While serving as coordinator or assistant coach did not violate any rules or regulations of the NCAA
 - e. Representations in Coach's bio are current and accurate
 - f. Coach has never engaged in any other actions or conduct that reflect adversely on the good name and reputation of the university
49. Internet - Website
50. Nepotism
51. Offset
52. Authorization to Investigate Background – Resume Accuracy
53. Reassignment
54. IRS Section 409(a)
55. Coach Will Not Incur University Indebtedness
56. Coach Will Not Make Statements Inconsistent with University Objectives
57. Payroll Deductions – Withholdings - Taxes
58. University Signature and Approval – Board of Regents Approval
59. Assignment to Legal Entity
60. Support of Program
 - a. Academic counselors/tutoring and educational services and APR Oversight
 - b. Maintenance and Improvement of physical facilities
 - c. Budget – Salary Pool sufficient to hire and retain maximum number of assistant coaches
 - d. Budget necessary to cover expenses associated with first class recruiting
 - e. Awarding of maximum number of scholarships to athletes permissible by NCAA rules
61. Sovereign Immunity

62. Legislative Funding
63. No Secret Agreements
64. Athletic Association or Third-Party Guarantee
65. No waiver – The agreement shall not be construed to constitute as waiver by the university to claim such exemptions, privileges, or immunities as may be permitted by law.
66. Miscellaneous
 - a. Severability
 - b. Amendments
 - c. Force majeure
 - d. Governing laws – forum selection
 - e. Assignment
 - f. Notices
 - g. State agency
 - h. Merger
 - i. Confidentiality – Non-confidentiality
 - j. Open records
 - k. Attorney review – Advice of Counsel
 - l. Relationship between the parties
 - m. Interpretation
 - n. Entire agreement
 - o. Counterparts
 - p. Time is of the essence
 - q. Independent judgment
 - r. Survival
 - s. Mutual draft rule
 - t. No third party beneficiaries